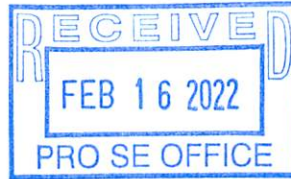


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK



MARIO H. CAPOGROSSO,

18 CV 2710

Plaintiff



-against-

ALAN GELBSTEIN, in his official and individual capacity;
IDA TRASCHEN, in her official and individual capacity;
DANIELLE CALVO, in her official and individual capacity;
SADIQ TAHIR, in his individual capacity;
PEC GROUP OF NY, INC.;
DAVID SMART,
and MARK SCHROEDR Commissioner of the
New York State Department of Motor Vehicles
Defendants

CLERK
U.S. DISTRICT COURT
E.D.N.Y.
7/17 FEB 16 PM 7:47
ATTORNEY GENERAL

**SUPPLEMENTAL OBJECTIONS TO REPORT & RECOMMENDATION DATED
FEBRUARY 1, 2022 (ECF 278)**

Mario H. Capogrosso hereby declares the following pursuant to 28 U.S.C.A. §1746:

1. I am the Plaintiff in the above-captioned matter.
2. I submit this Declaration in support of my Supplemental Objections to the Report & Recommendation of Magistrate Bloom (hereinafter "Report") dated February 1, 2022 (ECF 278).
3. My specific Supplemental Objections to the foregoing Recommendations are as follows:
4. The Report states, "plaintiff fails to establish that Smart was involved in the decision to bar plaintiff from the TVB. Indeed was not even involved with removing plaintiff from the TVB. Plaintiff fails to show that Smart was compelled to act by the state on May 11, 2015 or that any public function was delegated to Smart. Plaintiff provides no evidence to the support his theory that Smart was involved in the decision to bar him from the TVB."

(Report, page 19). I oppose this conclusion, it is not true. The record evidence creates a genuine issue as to material facts.

All possible evidence was not gathered in this matter because I was not allowed full and complete discovery.

The record demonstrates that I noticed defendant Smart to appear for oral examination by deposition. Defendant Smart failed respond to such deposition notices and the Court refused to order “defendant Smart provide his email and phone number to plaintiff,” ECF 148 page 3, which was required to complete. discovery. The Court previously ordered that all discovery be conducted remotely. See ECF 131. See Notices of Deposition, attached as Exhibit A.

The record demonstrates that I noticed defendant Schroeder to appear for oral examination by deposition, and the Court granted defendant Schroeder a protective order so that his examination would not go forward. See ECF 148. See Notices of Deposition, attached as Exhibit A.

The record demonstrates that I attempted to gather witness testimony at the Brooklyn South TVB but the Court ordered that I not enter the Brooklyn TVB to gather such witness testimony. See ECF 104 and 108. At the time of this order I was only prevented from practicing law at the New York TVBs. See Traschen deposition , ECF 235-3, page 6.

5. This Supplemental objection is timely. FRCP Rule 5 (b)(2)(C) provides that “service is complete upon mailing.” Report and Recommendation ECF 278, page 20 states, “the parties shall have fourteen days from service of this Report to file written objections.” The Eastern District Court mailing envelope provides a postmark mark date of February 3,

2022, attached as Exhibit B. February 16, 2022 is fourteen calendar days from the postmark date, which is pursuant to FRCP Rule 5 the service date.

Dated: February 16, 2022
New Rochelle, New York



Mario H. Capogrosso
21 Sheldrake Place
New Rochelle, NY 10804

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARIO H. CAPOGROSSO,

Plaintiff

-against-

**NOTICE OF DEPOSITION
OF DAVID SMART**

Case No. 18 CV-2710

ALAN GELBSTEIN, et al

Defendants

Pursuant to Rule 30(a) (1) of the Federal Rules of Civil Procedure, Plaintiff Mario H. Capogrosso, will depose defendant **David Smart** before a notary public or other person duly qualified to administer an oath, remotely and electronically via a Zoom conference **on Thursday December 17, 2020 at 3:00 p.m.** and will continue thereafter until completed. Defendant must produce a valid email at which he may be deposed.

Pursuant to Rule 30(b)(3) of the Federal Rules of Civil Procedure, the deposition upon oral examination will be recorded stenographically and will be used for the purposes of discovery or for use as evidence, or for both purposes.

Dated: December 10, 2020
New Rochelle, New York

A handwritten signature in black ink, appearing to read 'M. H. Capogrosso', written over a horizontal line.

Mario H. Capogrosso
21 Sheldrake Place
New Rochelle, NY 10804
(914) 806-3692

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARIO H. CAPOGROSSO,

Plaintiff

-against-

**AFFIRMATION
OF SERVICE**

Case No. CV-18-2710

ALAN GELBSTEIN, et al


Defendants

I, Mario H. Capogrosso, declare under penalty of perjury that I have served a copy of the attached Notice of Deposition upon:

David Smart
2875 West 8h Street
Brooklyn, NY 11224

via U.S. Postal Service First Class Mail, this 10th day of December, 2020.

New Rochelle, NY
December 10, 2020


Mario H. Capogrosso
21 Sheldrake Place
New Rochelle, NY 10804
(914) 806-3692

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARIO H. CAPOGROSSO,

Plaintiff

-against-

**PLAINTIFF'S SECOND
DEMAND FOR
DEPOSITION DATES**

ALAN GELBSTEIN, in his official and individual capacity;
IDA TRASCHEN, in her official and individual capacity;
DANIELLE CALVO, in her official and individual capacity;
SADIQ TAHIR, in his individual capacity;
PEC GROUP OF NY, INC.;
DAVID SMART, in his individual capacity;
JOHN AND JANE DOE, and
DMV COMMISSIONER MARK SCHROEDER, in his official capacity

Defendants

Pursuant to Rules 27 – 32 of the Federal Rules of Civil Procedure the Plaintiff, Mario H. Capogrosso, seeks that defendant David Smart **provide a date, and three alternative dates**, upon which his deposition upon oral examination may be taken. Plaintiff will depose all defendants on the same date. Plaintiff seeks such dates subsequent to October 2, 2020, and on or prior to October 15, 2020.

Further, at the last pre-trial status conference on June 16, 2020, in which you were not present, Judge Magistrate Bloom ordered that all depositions were to be held remotely and electronically. As such, in order to comply with this Court Order and conduct your deposition upon


oral examination, I need to know and have answers provided to the following;

- 1) Will you have access to the internet so that I may proceed with your deposition upon oral examination on your deposition date; and
- 2) Will you have access to a laptop computer so that I may proceed with your deposition upon oral examination upon your deposition date

Plaintiff demands a response within seven (7) days of the service of this discovery request to be provided at Plaintiff's current address listed below.

Dated: September 2, 2020
New Rochelle, NY

Submitted,


Mario H. Capogrosso
21 Sheldrake Place
New Rochelle, NY 10804
(914) 806-3692

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARIO H. CAPOGROSSO,

Plaintiff

-against-

**AFFIRMATION
OF SERVICE**

Case No. CV-18-2710

ALAN GELBSTEIN, in his official and individual capacity;
IDA TRASCHEN, in her official and individual capacity;
DANIELLE CALVO, in her official and individual capacity;
SADIQ TAHIR, in his individual capacity;
PEC GROUP OF NY, INC.;
DAVID SMART, in his individual capacity;
JOHN AND JANE DOE, and
DMV COMMISSIONER MARK SCHROEDER, in his official capacity


Defendants

I, Mario H. Capogrosso, declare under penalty of perjury that I have served a copy of the
attached Demand for Deposition Dates upon:

David Smart
2875 West 8h Street
Brooklyn, NY 11224

via U.S. Postal Service First Class Mail, this 2nd day of September 2020.

New Rochelle, NY
September 2, 2020



Mario H. Capogrosso
21 Sheldrake Place
New Rochelle, NY 10804
(914) 806-3692

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARIO H. CAPOGROSSO,

Plaintiff

-against-

**NOTICE OF DEPOSITION
DMV COMMISSIONER
MARK SCHROEDER**

Case No. 18 CV-2710


ALAN GELBSTEIN, et. al,

Defendants

Pursuant to Rule 30(a) (1) of the Federal Rules of Civil Procedure, Plaintiff Mario H. Capogrosso, will depose defendant **Mark Schroeder** before a notary public or other person duly qualified to administer an oath remotely and electronically via a Zoom conference **on Thursday December 17, 2020 at 2:00 p.m.** and will continue thereafter until completed. Defendant must produce a valid email at which he may be deposed.

Pursuant to Rule 30(b)(3) of the Federal Rules of Civil Procedure, the deposition upon oral examination will be recorded stenographically and will be used for the purposes of discovery or for use as evidence, or for both purposes.

Dated: December 10, 2020
New Rochelle, New York



Mario H. Capogrosso
21 Sheldrake Place
New Rochelle, NY 10804
(914) 806-3692

EXHIBIT B

CLERK OF U.S. DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

225 CADMAN PLAZA EAST

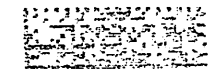
BROOKLYN, NY 11201

OFFICIAL BUSINESS

recipient

02/03/2022

USPS® \$001.76⁰



ZIP 11201
041M11470324

Mario H. Capogrosso
21 Sheidrake Place
New Rochelle, NY 10804

